

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

<p>ERIC CERVINI, WENDY DAVIS, DAVID GINS, and TIMOTHY HOLLOWAY,</p> <p>Plaintiffs,</p> <p>v.</p> <p>ELIAZAR CISNEROS, HANNAH CEH, JOEYLYNN MESAROS, ROBERT MESAROS, DOLORES PARK, and JOHN and JANE DOES,</p> <p>Defendants.</p>	<p>Civil Action No. 1:21-cv-00565-RP</p> <p>Hon. Robert Pitman</p>
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**JOINT STATUS REPORT AND PROPOSED SCHEDULING ORDER**

In response to this Court’s August 19, 2022 Order directing the parties to file a joint scheduling order, Counsel for Plaintiffs Cervini, Davis, Gins, and Holloway (collectively “Plaintiffs”) and Defendants Cisneros, Mesaros, and Park (collectively, “Defendants”) met and conferred on Friday, September 9, 2022.<sup>1</sup> The parties each also conferred with counsel for the defendants in the related case *Cervini v. Stapp*, Case No. 1:21-cv-00568 (“*Stapp*”) during the week of September 12, 2022.

The Parties attach their proposed joint scheduling order as Exhibit 1.

*Plaintiffs’ Position:* Defendants informed Plaintiffs on the parties’ September 9, 2022 conference that they plan to file a petition for a writ of mandamus challenging the legal sufficiency of Plaintiffs’ federal claim under the Ku Klux Klan Act and a motion to stay discovery while that

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<sup>1</sup> Defendant Hannah Ceh did not participate in the September 9, 2022 conference. However, on September 9, 2022 Ceh emailed Plaintiffs’ counsel to notify them that she was not opposed to the proposed schedule Plaintiffs circulated to all parties in the instant case on September 2, 2022.

petition is decided. Plaintiffs are opposed to Defendants' contemplated motions. *See Nken v. Holder*, 556 U.S. 418, 426 (2009) (to obtain a stay, Defendants would have to make a "strong showing" that they are likely to succeed on the merits of their mandamus petition, that they would be irreparably injured absent a stay, that a stay would not injure other parties to the proceeding, and that it would be in the public interest); *Silicon Hills Campus, LLC v. Tuebor REIT Sub, LLC*, No. 1:20-CV-1201-RP, 2021 WL 783554, at \*2 (W.D. Tex. Mar. 1, 2021).

In addition, the Court's August 19, 2022 Order directed the parties to confer with the defendants in the related case *Stapp* to ensure that the schedules in both cases align. The parties in that case are concurrently submitting a joint proposed scheduling order in light of the joint proposed scheduling order agreed to in the instant case. Plaintiffs note that any delays to the schedule in the instant case may necessitate alterations to the schedule agreed to in *Stapp*.

*Defendants' Positions:* Defendant Park intends to file a Petition for Writ of Mandamus to the Fifth Circuit challenging the legal sufficiency of Plaintiffs' federal claim under the Ku Klux Klan Act, *see* ECF Nos. 64 and 100, and a contemporaneous Motion to Stay Discovery pending the appellate court's determination on her Petition. Defendant Park's primary position is that discovery should presently be abated pending the disposition of her Petition.

Defendants Cisneros and Mesaros join in this position. While reserving all rights, Defendants Park, Cisneros, and Mesaros, conditionally agree to the attached proposed scheduling order in the event stay is denied. It is also these Defendants' position that while the Court ordered for the parties in this case and *Cervini v. Stapp* to coordinate for the purpose of this scheduling order, in the interest of justice and fairness, consolidation would be inappropriate under Fed. R. Civ. 42.

With respect to the deadline for the report on alternative dispute resolution, Defendants note that they intend to move for exemption from ADR pursuant to Local Rule CV-88(e).

DATED: September 16, 2022

Respectfully Submitted,

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